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*American Girl, LLC*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

AMERICAN GIRL, LLC,

*Plaintiff*

v.

ZEMBRKA d/b/a WWW.ZEMBRKA.COM and  
WWW.DAIBH-IDH.COM;  
WWW.ZEMBRKA.COM; and WWW.DAIBH-  
IDH.COM

*Defendants*

**CIVIL ACTION NO. 21-cv-2372 (MKV)**

**DECLARATION OF JASON M.  
DRANGEL IN SUPPORT OF  
PLAINTIFF'S MOTION FOR  
RECONSIDERATION OF  
DEFENDANTS' MOTION TO DISMISS**

I, Jason M. Drangel, hereby declare as follows:

1. I am an attorney with the law firm of Epstein Drangel<sup>1</sup>, located at 60 East 42<sup>nd</sup> Street, Suite 2520, New York, New York 10165 and represent Plaintiff in the above-referenced action. I make and submit this declaration in connection with Plaintiff's Motion for Reconsideration of

<sup>1</sup> Where a defined term is referenced herein but not defined, it should be understood as it is defined in the Glossary in Plaintiff's Memorandum of Law in Support of Motion for Reconsideration of Defendants' Motion to Dismiss.

Defendants' Motion to Dismiss.

2. Epstein Drangel represents Plaintiff in intellectual property matters.
3. Since late 2017, Epstein Drangel, on behalf of a variety of clients, has sought and obtained over two hundred (200) temporary restraining orders in the Southern District of New York that have required financial institutions, such as PayPal, to freeze the assets of thousands of sellers of counterfeit goods on a variety of online retail platforms, such as Alibaba.com, DHGate, eBay, Amazon and Wish, and provide discovery regarding, among other things, sales ("Previous TRO(s)").
4. There has been an informal understanding between PayPal, which qualifies as a Financial Institution under the TRO (and Previous TROs), and Epstein Drangel since at least early 2018, that given that many defendants default in these types of lawsuits, at the initial stages of a litigation, Epstein Drangel only generally requires PayPal to comply with Sections V(B) (or similar, if not identical, provisions of the Previous TROs).
5. On March 19, 2021, Epstein Drangel received notification from PayPal that it froze the Financial Accounts owned by Defendants, and associated with the email addresses initially identified for Defendants, along with a report detailing certain basic account details, as required by the TRO, Section (V)(B).
6. On March 22, 2021, Epstein Drangel provided PayPal with additional email addresses associated with Defendants, and PayPal thereafter, on April 6, 2021, also confirmed the accounts associated therewith had been frozen, and provided reports detailing certain basic account details for the newly identified accounts, as required by the TRO, Section(V)(B).
7. On March 22, 2021, Epstein Drangel also requested that PayPal provide additional information in compliance with its more extensive discovery obligations under Section V(D)(1)(f). Epstein Drangel again requested such information on March 31, 2021, April 6, 2021 and April 7, 2021.

8. As of April 28, 2021 (i.e., the date that the TRO was dissolved), PayPal still had not compiled with Epstein Drangel's request for additional information.
9. On April 30, 2021, Epstein Drangel advised PayPal that the TRO in this action was dissolved per the Court's 4/28 Order, and that PayPal was no longer obligated to comply with the terms thereof.
10. Prior to the dissolution of the TRO, a majority of the correspondence between Epstein Drangel and PayPal had been with legal specialists at PayPal, who Epstein Drangel has generally always corresponded with regarding the Previous TROs.
11. Given that Defendants appeared in this action and filed Defendants' MTD, I took the initiative to escalate our request for additional information, which would aid in Plaintiff's response to Defendants' MTD, to PayPal's outside counsel, who I have communicated with in the past.
12. I sent emails to PayPal's outside counsel on April 16, 2021 and April 29, 2021, before I was finally referred to new counsel for PayPal on May 3, 2021.
13. On May 3, 2021, I spoke with Clete P. Samson, a lawyer with Kutak Rock LLP, who acts as outside counsel for PayPal, and I explained that the TRO was dissolved and requested that PayPal voluntarily produce additional information that Epstein Drangel knows PayPal has access to, but does not ordinarily provide, and is relevant to a number of critical factual allegations made by Defendants that were relied on by this Court in issuing its 4/28 Order, including, among other things, evidence of Defendants' sales to customers in New York.
14. In response to Epstein Drangel's request and with full knowledge that the TRO was dissolved, counsel for PayPal discussed the request for the voluntary production of additional information with PayPal and on May 4, 2021 and May 7, 2021, Epstein Drangel received the relevant spreadsheets from PayPal, which can be made available for the Court's in camera review and to counsel for Defendants upon request ("PayPal Reports").

15. The PayPal Reports show all transactions for three (3) PayPal accounts owned by the Defendants, and associated with a variety of websites owned or operated by Defendants, including Defendants' Websites (i.e., ([www.zembrka.com](http://www.zembrka.com), [www.daibh-idh.com](http://www.daibh-idh.com); [www.zembrka.com](http://www.zembrka.com); and [www.daibh-idh.com](http://www.daibh-idh.com)) ("PayPal Accounts"), for the past year.
16. The PayPal Reports collectively show tens of thousands of transactions over the past year in connection with Defendants' sales of goods, including Defendants' Counterfeit Products, using Defendants' PayPal Accounts, without any geographic restrictions.
17. The PayPal Reports show seven hundred (700) transactions relating to New York customers over the past year, with an aggregated transaction value of \$41,369.72 USD for all such purchase transactions by New York customers.
18. With specific relevance to this action, the PayPal Reports show that thirty-eight (38) discrete New York customers purchased Counterfeit Products (excluding Epstein Drangel) through Defendants' Websites (the "Relevant New York Customers") over the past year, all in March 2021, with transactions totaling \$3,985.71 USD for Counterfeit Products to the Relevant New York Customers (excluding Epstein Drangel's test buys).
19. It appears that none of the Relevant New York Customers received the Counterfeit Products, given that the PayPal Reports reflect that the thirty-eight (38) Relevant New York Customers were eventually refunded by Defendants, and a small handful of transactions were cancelled.
20. Based on the dates on the PayPal Reports, despite the fact that most of the Relevant New York Customers' purchases were in March 2021, the vast majority of the Relevant New York Customers were not refunded by Defendants until mid-April (i.e., well after the TRO was entered and Defendants retained counsel).
21. The PayPal Reports indicate that a number of customers complained to PayPal regarding Defendants, including Defendants' Websites and the Counterfeit Products, and expressed

dissatisfaction that products (including Counterfeit Products) were not received, such customers could not get in touch with Defendants and/or communications had been ignored, and requested refunds from PayPal.

22. The Paypal Reports include comments from customers expressing confusion regarding the Counterfeit Products that they purchased through Defendants' Websites, such as:

- "BUYER->American girl doll it said that it was shipping from a American co but it does not look that way" (a customer in Kennesaw, Georgia);
- "BUYER->This is a fraudulent offering. I have contacted American Girl Doll company and they advise me this is not a legitimate product of theirs as advertised. I only purchased this because they billed through your services. This may not be the right place to request this but you do not offer an exact place for this request." (a customer in Portland, Oregon); and
- "BUYER->I purchased an American girl doll that was too good to be true, the website was "zembrka.com" seeing as PayPal was a payment option, I didn't think of the website to be a scam as PayPal offers strong protection to buyers. Further investigation of this website, I have heard from other people that it's a scam website. So I'm opening a case for my own protection. I am not looking for a refund, I'm looking for the item I purchased & I expect tracking in a timely manner. If that fails then I hope to be refunded." (a customer in Reading, Pennsylvania)

23. On May 5, 2021, with PayPal's consent, I reached out to several Relevant New York Customers identified on the PayPal Reports, including Rita Dangelo, whose declaration is submitted herewith.

I declare under the penalty of perjury under the laws of the United States of America that to the best of my knowledge the foregoing is true and correct.

Executed on this 12th day of May, 2021 in Westchester County, New York.

By:

  
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Jason M. Drangel